

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, refusing to refund a \$75 processing fee for a simultaneous oil and gas lease application.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly declare a simultaneous oil and gas lease application unacceptable and return the filing fee and first year's rental, minus a \$75 processing fee, where the applicant failed to file the application timely with the Wyoming BLM State Office.

APPEARANCES: Merle R. Yontz, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Merle R. Yontz has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 17, 1985, refusing to refund a \$75 processing fee with respect to appellant's simultaneous oil and gas lease application. ^{1/}

On March 4, 1985, the BLM State Office in Cheyenne, Wyoming, received appellant's simultaneous oil and gas lease application (the Part B application form) for parcel No. 508 in the February 1985 simultaneous oil and gas

^{1/} On May 29, 1986, Department Counsel for BLM filed a Motion to Dismiss appellant's appeal for failure to comply with 43 CFR 3112.3(h). That regulation provides:

"(h) In order to appeal a decision of the authorized officer not to accept an application under § 3112.3 of this title, the applicant shall submit a copy of the returned application, the filing fee, the first year's rental, and a notice of appeal. The filing fee shall be retained regardless of the outcome of the appeal."

Appellant however does not appeal the BLM decision not to accept his application; rather, he maintains that BLM should not have retained a \$ 75 processing fee. As appellant is not seeking to have his application reinstated he is not required to resubmit the filing fee and first year's rental with his notice of appeal. The motion to dismiss is therefore denied.

lease drawing. The application was signed by appellant and dated February 1985. The application was received in an envelope which indicated that it had been mailed on February 17, 1985, from Peoria, Illinois, and was also postmarked in Mills, Wyoming, on February 20, 1985. There is no BLM office in Mills, Wyoming. Moreover, there is no explanation in the record for why the envelope went to Mills, Wyoming, when it was clearly addressed to the BLM "Land Office" in Cheyenne, Wyoming.

By notice dated April 3, 1985, BLM informed appellant that it had received appellant's lease application "after the closing of the filing period" for the February 1985 drawing, which ended February 21, 1985. ^{2/} BLM stated that appellant's application was, therefore, considered unacceptable under 43 CFR 3112.3 and BLM was processing a refund of appellant's filing fee and first year's advance rental, minus a \$75 processing fee.

By letter dated April 10, 1985, appellant requested a refund of the \$75 processing fee, contending that it was not his fault that the lease application was received too late for the February 1985 drawing. Appellant stated that the application was "received by the BLM at Mills on Feb. 20 but was not stamped in at your office until March 4." Appellant argued that BLM should simply have "returned the filing."

In its April 1985 decision, BLM refused to refund the \$75 processing fee. BLM explained:

We are required to deposit all remittances daily. No distinction is made as to whether the application covered by a particular remittance is unacceptable or not -- all remittances are deposited upon receipt. Your application was received after the close of the filing period and was therefore determined to be unacceptable. By regulation, an unacceptable application results in assessment of a processing fee of \$75 per Part B form, 43 CFR 3112.3(b). The processing fee is aimed at recovering the administrative costs of special handling of your form. The refund of fees had to be performed manually rather than automatically, the notification of unacceptability had to be prepared manually, and accounting of fees had to be handled manually.

In his statement of reasons for appeal, appellant states that he has "no complaint" that he missed the February 1985 filing period but argues that BLM should not retain the \$75 processing fee in the interest of fairness where "it took the BLM from Feb. 20 until March 4 to get the letter from Mills to Cheyenne."

It is quite apparent that appellant is laboring under the misapprehension that BLM is responsible for the fact that his lease application was not

^{2/} The filing period for the February 1985 drawing ran from the time BLM posted a list of available parcels on the first working day "until the close of business on the 15th working day of that month." 43 CFR 3112.1-2.

received by the BLM State Office in Cheyenne until March 4, 1985, and that a BLM office in Mills actually received the application on February 20, 1985, within the February 1985 filing period. As noted above, there is no BLM office in Mills, Wyoming. We are at a loss to explain what happened to appellant's lease application and, specifically, why it was routed (or "sent") to Mills, Wyoming. The fact remains that, through no apparent fault of BLM or appellant, appellant's lease application was not received by BLM in Cheyenne until after the February 1985 filing period.

The apparent fault for appellant's late filing lies with the Postal Service. However, we have long held that someone, having chosen the Postal Service as the means of delivery of a required document, must bear the consequences of loss or untimely delivery of the document. Paul E. Hammond, 87 IBLA 139 (1985), and cases cited therein; see also Jay R. Angle, 77 IBLA 242 (1983).

[1] Departmental regulation 43 CFR 3112.2-1(g) provides that a simultaneous oil and gas lease application "shall be filed within the filing period in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming." A document is considered to be filed when it is "delivered to and received by the proper office." 43 CFR 1821.2-2(f). Accordingly, appellant's lease application cannot be considered to have been filed with BLM until March 4, 1985, well after the close of the filing period. A Part B application form is deemed "unacceptable" where it "[i]s not timely filed in the Wyoming State Office." 43 CFR 3112.3(a). Thus, BLM properly declared appellant's application to be unacceptable. Cf. Derrick Fuller, 56 IBLA 33 (1981). Moreover, Departmental regulation 43 CFR 3112.3(b) clearly provides: "For each Part B application form deemed unacceptable, of the fees remitted, a \$ 75 processing fee shall be retained and the balance of fees, if any, shall be returned." Accordingly, we must conclude that BLM properly refused to refund a \$ 75 processing fee to appellant where his lease application was deemed unacceptable due to its late filing. Eugen Georgescu, 91 IBLA 387 (1986); Frances Kunkel, 80 IBLA 333 (1984).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge.